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Agenda item 7

REPORT OF THE EXPERT MEETING ON COMPETITION LAW AND POLICY ON ITS FIRST SESSION

Held at the Palais des Nations, Geneva,
from 13 to 15 November 1996

GE. 96-52245

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INTRODUCTION

1. In accordance with the calendar of UNCTAD meetings for the remainder of 1996, approved by the Trade and Development Board at its forty-third session, the Expert Meeting on Competition Law and Policy held its first session at the Palais des Nations, Geneva, from 13 to 15 November 1996.

Chapter I

GENERAL STATEMENTS [1]

2. The **representative of the UNCTAD secretariat** recalled UNCTAD's mandates and work programmes on competition law and policy established by the Third Review Conference and at UNCTAD IX. In line with these provisions, the Expert Meeting should now hold multilateral consultations, comment on the secretariat's documentation and work programme, suggest how UNCTAD's ability to provide technical cooperation might be strengthened, and agree on a report of its deliberations for submission to the Commission on Investment, Technology and Related Financial Issues.

3. The representative of the **Republic of Korea** said that the world economy was undergoing rapid transformation whereby not only commodities but also services, intellectual property rights and production inputs moved around freely among countries. As a result, competition had become ever more fierce, producing what was often referred to as "mega-competition". However, anti-competitive regulations and monopolistic market structures persisted in many countries, as well as structural barriers that hindered enterprises' free access to markets. Efforts had been made to remove such barriers at the national, regional and international levels.

4. The Korean Government was making active efforts to cope with the changes in the global economy. For example, while there had been a general down-sizing of the Government, the Korean Fair Trade Commission had been enlarged and made into an independent, central administrative agency and the status of its Chairman had been elevated from vice-ministerial level to ministerial level. Furthermore, the Fair Trade Commission was pursuing revision of the Fair Trade Act to extend its application.

5. The effective enforcement of the Set of Principles and Rules on Restrictive Business Practices had helped UNCTAD to eliminate various anti-competitive regulations and practices in a great number of countries. However, in solving problems that might arise from rapid international convergence of competition policies, close cooperation among countries would be increasingly necessary. Hence the significance of the forthcoming WTO Ministerial Meeting to be held in Singapore in December. But States would still need to adopt competition laws and enforce them effectively in order to strengthen their bilateral and multilateral cooperation. With that very goal in mind, the Korean Government had held an International Training Programme on Competition Policy for countries interested in Korean competition laws and committed to adopting their own laws. The Korean Government planned to continue such technical assistance efforts. More generally, the Republic of Korea was committed to participating actively in the Expert Meeting and would continue to cooperate with the competition authorities of other countries to promote competition in the world market.

6. The representative of **Tunisia**, summarizing recent developments in competition law and policy in his country, said that the scope of application of the law had been extended, the competition authority's structures and powers had been consolidated and implementing regulations had been adopted.

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[1] Statements made at the 1st plenary meeting, on 13 November 1996.

Investigators had been trained, enforcement had been strengthened, and the competition authority's involvement with other governmental policies had been increased. Consumer protection legislation had also been strengthened. This was happening in the context of the liberalization of the Tunisian economy and its integration with the European and global economies. Cooperation on competition law and policy with other countries and international organizations had also been strengthened, and his country attached importance to the exchange of views, promotion of convergence and cooperation which could be facilitated by the Expert Meeting. In his view, discussions should be started on the establishment of multilateral competition rules. The work of the Expert Group could make an important contribution to consensus building in this area, as well as helping countries to better understand the issues. However, at the national level, competition authorities' powers remained limited, particularly when practices had international dimensions. It was therefore necessary to try to develop these authorities' abilities through technical cooperation, information exchange and the establishment of databases. In this respect, particular attention should be paid to Africa, as requested by UNCTAD IX and demonstrated by the Tunis Workshop. His country therefore proposed to organize several African regional workshops to promote the adoption of competition laws and better enforcement in other African countries, as well as activities within the context of regional groups.

7. The representative of the **European Commission** said that it was likely that the number of transborder RBPs (particularly cartels, abuses of dominance and mergers having international effects) had increased in proportion with the considerable growth in international trade, in foreign direct investment, and in the size and number of transnational corporations. The tools which competition authorities used were sometimes inadequate to deal with such cases. This was why the Van Miert report pepared by a group of experts convened by the European Commission had suggested that an international framework of competition rules should be established. In accordance with a Commission proposal approved by the European Council of Ministers, the European Union had proposed at the World Trade Organization that, at the Singapore Ministerial Meeting, a WTO working group should be established to examine whether consensus might be reached in the following four areas: (a) an undertaking by all WTO members to establish national competition structures, including rules against cartels, abuses of dominance and anticompetitive mergers, and provisions for equitable, transparent and non-discriminatory access by individuals to national competition authorities; (b) international principles relating to particularly noxious RBPs such as price-fixing; market-sharing, predatory pricing and export cartels; (c) the adoption of an instrument for cooperation among competition authorities; and (d) the adaptation of the WTO dispute settlement system to cover competition disputes. Developing countries would benefit from the contribution which a convergence of national competition rules would make to the global economy, and from the rights to immediate application of international competition rules, access to dispute settlement machinery and technical assistance, while they themselves would be subject to obligations only after a transitionary period. Discussion should proceed first in areas where consensus could be reached rapidly, such as horizontal RBPs, and work on abuses of dominance and vertical restraints could be left for later. The working group's mandate should be limited to RBPs by firms. Action in this area would result in less recourse by Governemnts to trade instruments.

8. The representative of **Hungary** stated that effective competition legislation had been enacted in Hungary in 1990. The drafting of the law had taken into account the Set of Rules for the Control of Restrictive Business Practices. During the enforcement period of the law up to the present (1991-1996), the competition authority had reached a final decision in more than 680 proceedings, in 36 per cent of which an infringement of the law had been found. In June 1996, a new competition law, which took into account the most modern approaches to competition policy, had been enacted. The new Act on Prohibition of Unfair and Restrictive Market Practices would come into force on 1 January 1997. Based, as regards restrictive practices, on the "effects doctrine", the Act would except from the general cartel ban agreeements among enterprises under common control, and provide for the possibility of granting individual and bloc exemptions to others.

9. The representative of **Egypt** stated that the Egyptian Government was currently working on the preparation of a competition law, against the background of a wide debate among the different Government bodies on what should be the content and the scope of application of the proposed competition legislation. His Government wished to emphasize the important contribution that UNCTAD and other national and international organizations were providing to Egypt with respect to technical assistance in competition law and policy.

10. The representative of the **Russian Federation** pointed to the importance of the radical economic reforms implemented in countries of Eastern Europe and the former USSR, with the development of competition and entrepreneurship being one of the elements of these reforms. Although the regulation of competition in his country was not as effective as in many developed countries, significant positive changes had taken place in this area. The specific feature of the Russian situation, as well as of other CIS countries, consisted in the lack of infrastructure to support State regulation of competition: there was in fact a severe shortage of legal and consulting firms, highly qualified law-makers, teachers and researchers. So far these countries had not been given technical assistance in the area of competition in the framework of UNCTAD, even though the acceleration of their economic transformation made the provision of such assistance extremely important. The main legislative act on competition in his country was the "Law on competition and limitation of monopolistic activity on commodity markets" adopted in 1991, which was complemented by laws on advertising, on State support for small business and by a new version of the law on protection of consumers' rights.

11. Finally, he suggested that, given the experience accumulated by UNCTAD in the area of RBPs, it could be asked to extend its activities, in coordination with other international agencies, including the WTO, to the analysis and, if considered necessary, elaboration of multilateral rules on competition, taking into account the importance of the Set of Principles and Rules for the Control of RBPs.

12. The representative of **Georgia**, describing the latest developments in the elaboration of competition legislation in his country, referred in particular to the adoption by the Georgian Parliament of the law on monopolistic activity and competition, of the law on the protection of the rights of consumers, and to the forthcoming adoption of the law on advertising. Outlining the economic situation in his country, he said that, owing largely to the assistance provided by a number of international agencies and individual countries, in 1995 the

decline in production had been halted and the economy had begun to recover. The rate of inflation, forecast at 30 per cent, had in fact amounted to only 12 per cent, while the rate of economic growth for the past 10 months was estimated at 14 per cent. The volumes of investments and of transit traffic had also increased significantly. Finally, he expressed gratitude to members of the international community for the assistance provided and expressed the hope that their relations with his country would become even closer.

13. The representative of the **United States of America**, responding to comments made on possible action which the WTO Ministerial Meeting in Singapore might take in this area, observed that it was unclear what work, if any, WTO would be mandated to undertake on competition.

14. The representative of **India** observed that the concern of developing countries in the 1970s had been to ensure that transnational corporations operated within a framework of rules which could protect the legitimate interests of host countries and promote their development. The outcome of these efforts was the Set of Principles and Rules on Restrictive Business Practices adopted in 1980. But the Set was not a legally binding instrument. The implementation of the Set had been monitored by periodic Review Conferences and meetings of the Intergovernmental Group of Experts on RBPs. But there was no evidence that TNCs felt obliged to abide by the Set in their activities, nor that developing countries were able to enforce the Set in their dealings with TNCs.

15. Since then, the world economy had undergone many changes in the form of globalization and liberalization. TNCs were now being wooed for investment. The debate had shifted from controlling RBPs to reducing government controls. Development, however, was and should remain the main concern. Greater competition should lead to greater efficiency, but concerns such as environmental protection, consumer protection, and defending the interests of workers were also very important. Competition policy should not seek the unbridled dismantling of utilities and public sector undertakings as these were often the only services available to the people in developing countries where entrepreneurial skills were nascent.

16. Regarding the proposal by the European Community that, at the WTO Ministerial Meeting, a Working Group be established to initiate exploratory work on competition policies and rules, it was the view of the delegation of India was that UNCTAD had considerable expertise in this area and therefore should continue its ongoing work. There was no need to hand over the mandate already given to UNCTAD at Midrand. The relationship between trade and competition policy was not clear; neither was the relationship between investment and competition policy. This raised the question of which was the appropriate forum to undertake exploratory work on international competition policy and rules. Whereas the WTO was a rules-based organization, UNCTAD had traditionally been development oriented and had a wider membership. Thus, a gradual approach was necessary, with emphasis on technical cooperation to enable developing countries to develop a legislative and institutional framework.

17. The representative of **Canada** stressed the importance of applying effective competition policy for building a modern economy. His own country's experience had shown that it was not sufficient to have an excellent competition law in the books. What was necessary was to develop expertise in implementing the law

effectively, and that was something which took time and called for cooperation and exchanges of experience with other countries.

18. The representative of **China** described efforts in his country since 1990 to introduce market economy reforms. These included a series of new laws. Reforms included efforts aimed at reducing direct State intervention in the market place while emphasizing the role of the State in setting the necessary conditions to provide the enabling environment for business.

19. Although the successful conclusion of the Uruguay Round had reduced the level of tariffs and resort to non-tariff barriers, enterprises could be prompted to resort to restrictive business practices. A number of developments, including the creation of strategic alliances, pointed in this direction. To combat such practices, sole reliance on domestic legislation was not sufficient. China therefore commended the important role played by UNCTAD to bring about consensus and a convergence of views in the field of competition. Part of that work included a series of competition seminars and workshops organized by UNCTAD in his country.

20. Finally, he described existing legislation in China, in particular the implementation of the Act against unfair competition which had been in force since 1 December 1993, and other laws, such as regulations prohibiting RBPs by public utilities, rules against brand-name counterfeiting and commercial bribery. Since the adoption of the Act against Unfair Competition, there had been major progress in strengthening its implementation and in raising the level of enforcement personnel.

21. The representative of **Pakistan** said that, in view of the process of liberalization and globalization, there was need to monitor and regulate foreign investment to the extent that it impinged on and affected competition, especially the operations of subsidiaries of transnational corporations. Most developing countries were not yet in a position to enforce their competition legislation effectively.

22. The representative of **Romania** stated that his country had adopted competition legislation in April 1996 in accordance with the Set of Principles and Rules on Restrictive Business Practices. Summarizing the main provisions of the Law, he said that the objective of the Law was to stimulate and maintain competition and consumer welfare. Its scope of application covered all undertakings, including State enterprises. It was based on prohibition principle, and mergers had to be notified. However, the Law did provide for exemptions. As for the institutional machinery, there were two components of the Competition Authority: a government agency and an autonomous competition council.

23. Finally, he expressed the hope that further technical assistance would be provided by UNCTAD, OECD and the European Union.

24. The representative of **Mexico** described the work of the Federal Competition Commission since adoption of the Competition Act in 1991. Mexico's legislation covered activities of all enterprises, including public enterprises, with very few exceptions (strategic industries and those indicated in the Constitution). Referring to competition legislation in an international framework, it was important in his view not to apply such legislation in a unilateral or

extraterritorial manner, as had been pointed out in the Final Communique of the recent Meeting of the Group of 15 in Harare (Zimbabwe).

25. The representative of **Venezuela** said that it was not sufficient to adopt a competition law and establish a competition authority, for most developing countries and countries in transition did not have a "competition culture". This was the case not only in public administrations, but throughout the economy in general. The main issue was to convince the consumer that competition policy was advantageous to him. It was therefore necessary to operate a cultural change in the society in order to benefit fully from a market economy. This was one of the main efforts undertaken by Venezuela in its five years of experience in implementing competition law.

26. The representative of **Slovenia** said that, after the adoption of the Competition Act in 1993 and the establishment of a Competition Protection Office in 1994, there had been a need to educate consumers in his country. As the general public continued to regard the competition authority as yet another part of the State bureaucracy, there was a need to give it with a positive image, which could be achieved only on the basis of its highly professional work performance. In this connection, he stressed the importance of assistance from the European Commission and a number of European countries, and he specified various forms of assistance provided by the United States. Turning to the issue of State subsidies, he noted that they could severely affect competition, which could also be distorted by measures of State discrimination against individual companies, while the imposition of entry barriers could discourage foreign direct investment.

Chapter II

CONSULTATIONS ON COMPETITION LAW AND POLICY, INCLUDING THE MODEL LAW AND STUDIES RELATED TO THE PROVISIONS OF THE SET OF PRINCIPLES AND RULES

(Agenda item 3)

27. For its consideration of agenda item 3, the Expert Meeting had before it the following documentation:

"Strengthening the implementation of the Set: the scope, coverage and enforcement of competition laws and policies and analysis of the provisions of the Uruguay Round Agreements relevant to competition policy, including their implications for developing and other countries" - Study by the UNCTAD secretariat (TD/B/COM.2/EM/2)

"Communication received from the Organisation for Economic Cooperation and Development" - Note by the UNCTAD secretariat (TD/B/COM.2/EM/4)

Consideration in informal consultations

28. In the course of the session, the Expert Meeting held informal consultations on the following specific topics:

Topic 1 - Experience of developing countries with the implementation of competition law and policy

Presentation by the representative of Kenya, followed by discussion

Topic 2 - Resale price maintenance

Presentation by the European Community, followed by discussion

Topic 3 - Competition policy and regulation of public monopolies and subsidies

Forum discussion

Presentation by Venezuela, Slovenia, Tunisia and France, followed by discussion

Topic 4 - Rules of confidentiality in competition policy

Presentation by United States of America.

Statements made at the closing plenary meeting

29. The representative of **Japan** stated that the Japanese Government had submitted to the UNCTAD secretariat comments on the secretariat study on agenda item 3 (TD/B/COM.2/EM/2), with a request that the secretariat distribute his Government's comments in an appropriate format.

30. The representative of the **United Kingdom** recalled that her country had submitted comments on document TD/B/COM.2/EM/2. In two cases, she felt that the comments had not been reflected entirely accurately in the text of the study. Secondly, there were one or two points where her delegation was not sure that certain statements were factually correct. The United Kingdom therefore wished to submit further comments in writing to clarify matters.

31. Concluding the discussion on agenda item 3, the **Chairman** said that the structure of the discussions, in the form of two workshops, one forum discussion and one presentation, was commendable. It encouraged a free exchange of views, allowing the Meeting to deal with the four topics in depth. He hoped that such a format would prepare the ground for more meaningful and businesslike sessions in future. The first workshop on the experiences and problems with competition law enforcement in developing countries, introduced by the excellent lead-speaker from Kenya, Mrs. Elizabeth Gachuiri, had been exciting and interesting, not least because of the wonderful presentation by Mrs. Gachuiri. The second workshop on the topic of resale price maintenance had been vividly introduced by Mr. Pierre Arhel from the European Commission and covered all the pros and cons of RPM. Both presentations had triggered a very lively discussion among developing countries, countries in transition and other countries. Thereafter, a provocative forum discussion on the interface of public regulations/public monopolies and competition policy enforcement had benefited greatly from the four lead speakers who were experienced representatives of competition enforcement agencies in three continents: Mr. Garmendia from Venezuela, Mr. Plahutnik from Slovenia, Mr. Ben Fraj from Tunisia and Mr. Souty from France. As expected, this gave rise to a lively and thorough discussion, with the participation of most of the countries represented in the Meeting. And lastly, the Meeting had heard a very lively presentation by Mr. Hand of the United States of America on confidentiality rules in competition law enforcement.

32. He thanked all the lead speakers for volunteering to make presentations on such complex subjects at such short notice. He also expressed his appreciation for the active participation of the experts in the discussions.

Chapter III

WORK PROGRAMME, INCLUDING TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON COMPETITION LAW AND POLICY

(Agenda item 4)

and

PROVISIONAL AGENDA FOR THE SECOND SESSION OF THE EXPERT MEETING

(Agenda item 5)

33. For its consideration of agenda item 4, the Expert Meeting had before it a note by the UNCTAD secretariat (TD/B/COM.2/EM/3).

Action by the Expert Meeting

34. At its 2nd (closing) plenary meeting, on 15 November 1996, the Expert Meeting on Competition Law and Policy adopted the draft agreed recommendations relating to agenda items 4 and 5 (TD/B/COM.2/EM/L.2).*

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* For the agreed recommendations, see annex I.

Chapter IV

ORGANIZATIONAL MATTERS

A. Opening of the session

35. The first session of the Expert Meeting on Competition Law and Policy was opened on 13 November 1996 by the Senior Programme Manager of the International Trade and Commodities Division, on behalf of the Secretary-General of UNCTAD.

B. Election of officers

(Agenda item 1)

36. At its 1st meeting, on 13 November 1996, the Expert Meeting elected the officers to serve on its Bureau as follows:

Chairman:	Mr. Cees Van Gent	(Netherlands)
Vice-Chairman:	Mr. Mohamed Ben Fraj	(Tunisia)
	Mr. Andrej Plahutnik	(Slovenia)
	Mr. François Souty	(France)
Rapporteur:	Mrs. Ana Lucy Gentil Cabral Petersen	(Brazil)

C. Adoption of the agenda and organization of work

(Agenda item 2)

37. At the same meeting, the Expert Meeting adopted the provisional agenda circulated in TD/B/COM.2/EM/1. Accordingly, the agenda for the first session was as follows:

1. Election of officers

2. Adoption of the agenda and organization of work

3. Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules

4. Work programme, including technical assistance, advisory and training programmes on competition law and policy

5. Provisional agenda for the second session of the Expert Meeting

6. Other business

7. Adoption of the report of the Expert Meeting on its first session.

38. Regarding the organization of work, the Expert Meeting agreed that, following the opening plenary meeting at which general statements were made for the record, the rest of the session would take place in an informal setting to enable the Meeting to focus on specific topics. The formal business would then be concluded at the closing plenary meeting.

D. Adoption of the report of the Expert Meeting on its first session

(Agenda item 7)

39. At its 2nd (closing) plenary meeting, on 15 November 1996, the Expert Meeting adopted the draft report on its session (TD/B/COM.2/EM/L.1), subject to any amendments that delegations might wish to make, and authorized the Rapporteur to complete the final report of the Expert Meeting as appropriate.

ANNEXES

Annex I

WORK PROGRAMME, INCLUDING TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON COMPETITION LAW AND POLICY

and

PROVISIONAL AGENDA FOR THE SECOND SESSION OF THE EXPERT MEETING

Agreed recommendations *

The Expert Meeting on Competition Law and Policy, meeting in Geneva from 11 to 15 November 1996,

Recalling the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and the Third United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (13-21 November 1995),

1. Requests its Chairman to inform the forthcoming meeting of the Commission on Investment, Technology and Related Financial Issues of the consensus view of the experts on competition law and policy that they should meet at the expert level in 1997. They recommend that this meeting focus on the following topics:

(a) Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules;

(b) Work programme, including UNCTAD's technical assistance, advisory and training programmes on competition law and policy.

2. Further recommends that the UNCTAD secretariat be requested:

(a) To pursue, within the available resources, its technical cooperation activities in the light of the resolutions adopted by the Third Review Conference and UNCTAD IX in "A Partnership for Growth and Development" as well as the deliberations and consultations held during this Meeting;

(b) To finalize the review of technical assistance in time for the next Meeting, taking into account the comments and additional information to be received from Governments and international organizations by 31 January 1997;

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* Originally circulated in TD/B/COM.2/EM/L.2.

(c) To prepare a study for consideration by the next Meeting on empirical evidence of the benefits (including the benefits for consumers) to be gained by developing and least developed countries and countries in transition from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development, on the basis of comments made at the present Meeting, and comments to be received by 31 January 1997;

(d) To continue to publish as non-sessional documents:

(i) Further issues of the Handbook on Competition Legislation;

(ii) A revised version of the Commentary to the Model Law, taking into account new legislative developments in the field of competition; and

(iii) An updated version of the Directory of Competition Authorities.

3. Further recommends that the Commission request the secretariat to prepare for the next Meeting specific consultations, covering the following important competition law and policy subjects:

(a) Non-price vertical restraints (selective distribution, exclusive dealing and franchising);

(b) Ways and means of promoting a competition culture and making transparent the benefits to be derived from competition policy;

(c) International aspects of competition and the problems for competition law enforcement, including international mergers and industrial concentration which affect other countries and the strengthening of international cooperation.

Annex II

ATTENDANCE */

1. The following States members of UNCTAD were represented at the session:

Algeria
Argentina
Austria
Brazil
Canada
Chile
China
Costa Rica
Cuba
Czech Republic
Democratic People's Republic of Korea
Dominican Republic
Egypt
Finland
France
Georgia
Germany
Guatemala
Honduras
Hungary
India
Indonesia
Iran (Islamic Republic of)
Iraq
Ireland
Italy
Japan
Kenya
Kyrgyzstan
Madagascar
Malaysia
Malta
Mexico
Morocco
Netherlands
Nicaragua
Nigeria
Pakistan
Philippines
Republic of Korea
Romania
Russian Federation
Saudi Arabia
Senegal
Slovakia
Slovenia
Spain
Sweden
Switzerland
Thailand
Togo
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America
Uruguay
Venezuela
Zambia

2. The International Trade Centre UNCTAD/WTO was represented at the session.

3. The following specialized agencies and related organization were represented at the session:

International Monetary Fund
International Telecommunication Union
World Trade Organization

4. The following intergovernmental organizations were represented at the session:

Arab Labour Organization
Caribbean Community
European Community
League of Arab States
Organisation for Economic and Co-operation and Development
Organization of African Unity

5. The following non-governmental organization was represented at the session:

General Category

World Confederation of Labour

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*/ For the list of participants, see TD/B/COM.2/EM/INF.1.